

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PETER C. MORRISON,

11 Plaintiff,

12 v.

13 M/V LIMIT STALKER, *In Rem*, and GREG
14 PACK AND MARY ANN PACK, *In*
Personam,

15 Defendants.
16

CASE NO. C08-600RSM

ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF ORDER
OF DEFAULT *IN REM* AND
DEFAULT JUDGMENT *IN REM*

17 This matter comes before the Court on Plaintiff's "Motion for Entry of Default
18 *In Rem* and Default Judgment *In Rem*" (Dkt. #16). Pursuant to Fed. R. Civ. P. 55 and Local
19 Admiralty Rule 130, Plaintiff Peter C. Morrison requests that the Court enter an Order of
20 Default *in rem* against Defendant M/V Limit Stalker, a maritime vessel (the "defendant vessel").
21 Plaintiff argues that Defendants have failed to file a verified statement of right or interest in
22 accordance with Rule C(6) of the Supplemental Rules for Admiralty or Maritime Claims and
23 Asset Forfeiture Actions.

24 Defendants respond that they have clearly indicated to Plaintiff that Defendant Greg
25 Pack ("Mr. Pack") has continually asserted an interest in the defendant vessel. Furthermore,
26 Defendants indicate that Mr. Pack properly filed a verified statement of interest pursuant to
27 Rule C(6). Therefore Defendants argue that an order of default is unwarranted.

28 Rule C(6)(a)(1) provides that "a person who asserts a right of possession or any

1 ownership interest in the property that is the subject of the action must file a verified statement
2 of right or interest: (A) within 10 days after the execution of process; or (B) within the time that
3 the court allows[.]” Based primarily on this language, Plaintiff argues that Mr. Pack failed to
4 file a verified statement of interest, thereby justifying an Order of Default and a Default
5 Judgment *in rem* against the defendant vessel.¹ Plaintiff notes that at the time he filed the
6 instant motion, Defendants had only filed a notice of appearance, which does not qualify as a
7 verified statement of interest under Rule C(6). Significantly, Mr. Pack filed a verified statement
8 of interest on August 4, 2008, five days after Plaintiff filed this motion on July 31, 2008.
9 Therefore Defendants argue that although Mr. Pack did not file a verified statement of interest
10 within 10 days of process pursuant to Rule C(6)(a)(1)(A), the language of Rule C(6)(a)(1)(B)
11 allows the Court to permit a person to file a statement of interest at any time so long as the
12 claimant does not suffer prejudice.

13 The Court agrees that the language of Rule C(6)(a)(1)(B) precludes an Order of Default
14 *in rem* in the instant case. The Ninth Circuit has expressly held that “[a]lthough the discretion
15 to grant additional time would normally be exercised at or shortly after the time process is
16 executed, nothing in the Rule *imposes a time limit on the exercise of that discretion.*” *United*
17 *States v. 1982 Yukon Delta Houseboat*, 774 F.2d 1432, 1435 (9th Cir. 1985) (emphasis added).
18 Furthermore, a court “should only exercise its discretion to grant additional time where the
19 goals underlying the time restriction and the verification requirement are not thwarted.” *Id.* at
20 1436. “The purpose of the time limit is to force claimants to come forward as soon as possible
21 after the forfeiture proceedings have been initiated so that all interested parties can be heard and
22 the dispute resolved without delay.” *Id.*; *see also Key Bank of Puget Sound v. Alaskan*
23 *Harvester*, 738 F. Supp. 398, 404-05 (W.D. Wash. 1989). Importantly, “pleadings and
24 procedural practices in maritime actions should be applied liberally.” *United States v. One*
25 *Urban Lot Located at 1 Street A-1*, 885 F.2d 994, 1001 (1st. Cir. 1989); *see also United States*

26
27 ¹ Plaintiff only moves for an Order of Default and a Default Judgment *in rem* against the defendant
28 vessel. Plaintiff clearly indicates that his motion does not relate to the *in personam* portion of his case
against Mr. Pack and his wife, individually.

1 *v. Beechcraft Airplane*, 789 F.2d 627, 630 (8th Cir. 1986) (specifically suggesting a more
2 liberal approach to Rule C(6) where mitigating circumstances exist).

3 In the instant case, Plaintiff cannot establish that he has suffered undue prejudice or
4 surprise because of Mr. Pack's delayed assertion of interest. This is not the type of situation
5 where a third party has asserted an interest unbeknownst to the claimant at the eleventh hour. It
6 is quite clear that at one point in time, Plaintiff and Mr. Pack shared an ownership interest in the
7 defendant vessel. (Dkt. #1, Pl.'s Compl., ¶ 7). The record also shows through emails
8 exchanged between Plaintiff and a third party that Mr. Pack has maintained his assertion that he
9 has an ownership interest in the defendant vessel. (Dkt. #21, Decl. of Webster, Ex. A). And
10 while Plaintiff disputes the validity of the emails because the third party is not a party to this
11 lawsuit, Plaintiff cannot refute that the third party indicated to Plaintiff that Mr. Pack was not
12 releasing his interest in the defendant vessel. Therefore Plaintiff has known that Mr. Pack has
13 disputed his unilateral ownership.

14 Mr. Pack's counsel also filed a notice of appearance in this case prior to Plaintiff moving
15 for default. Although a notice of appearance certainly does not constitute a statement of
16 interest, it certainly placed Plaintiff on notice of Defendants' intentions to defend Plaintiff's
17 lawsuit. The record also indicates that once the notice of appearance was filed, Mr. Pack's
18 counsel contacted Plaintiff's counsel in an attempt to resolve the matter without litigation.
19 (Decl. of Webster, ¶ 4). Plaintiff does not expressly refute this point. Moreover, penalizing
20 Defendants for attempting to settle this matter is not a policy the Court wishes to encourage.

21 Nevertheless, Plaintiff contends in his reply that Mr. Pack's statement of interest is
22 insufficient because no answer was filed in this case by the defendant vessel *in rem*. However,
23 the defendant vessel did in fact file an answer *in rem* on August 12, 2008. (Dkt. #25).
24 Although this was one day after Plaintiff filed his reply, the Court finds that Defendants' failure
25 to immediately file an answer *in rem* cannot form the basis of an Order of Default in this case.
26 *See United States v. One (1) 1979 Mercedes 450SE*, 651 F. Sup. 351, 355 (S.D. Fla. 1987)
27 (finding that the court was reluctant "to visit the sins of an attorney upon his client" where the
28 party seeking default could show no prejudice). Indeed, it is well-established that "[d]efault

1 judgments are disfavored and appropriate only in unique circumstances.” *Latshaw v. Trainer*
2 *Worthham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006) (citation omitted). It is equally
3 well-established that “[c]ases should be decided upon their merits whenever reasonably
4 possible.” *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (citation omitted). As a
5 result, the Court finds it inappropriate to grant Plaintiff’s motion because the underlying
6 purpose of Rule 6(a) has not been undermined or otherwise “thwarted” in this case. *See Yukon*
7 *Delta*, 774 F.2d at 1436. Defendants have established that mitigating circumstances exist for
8 the Court to justify the application of the express statutory language of Rule C(6)(a)(i)(B),
9 which very clearly allows a person to file a statement of interest “within the time the court
10 allows.” *See United States v. Lewis*, 67 F.3d 225, 228 (9th Cir. 1995) (“Canons of statutory
11 construction dictate that if the language of a statute is clear, [courts] look no further than that
12 language in determining the statute’s meaning.”) (citations omitted).

13 Having reviewed the relevant pleadings, all supporting documents thereto, and the
14 remainder of the record, the Court hereby finds and orders:

15 (1) Plaintiff’s “Motion for Entry of Order of Default *In Rem* and Default Judgment *In*
16 *Rem*” (Dkt. #16) is DENIED.

17 (2) The Clerk is directed to forward a copy of this Order to all counsel of record.
18

19 DATED this 25 day of August, 2008.

20 

21 RICARDO S. MARTINEZ
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28